

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)	CASE NO. 8:05CR199
)	
Plaintiff,)	
)	MEMORANDUM
vs.)	AND ORDER
)	
ROGELIO L. VALENZUELA-LOPEZ,)	
)	
Defendant.)	

This matter is before the Court on the Defendant's motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255 ("§ 2255 motion") (Filing No. 217).

Rule 4(b) of the *Rules Governing Section 2255 Proceedings for the United States District Courts* requires initial review of a § 2255 motion, and describes the initial review process:

The judge who receives the motion must promptly examine it. If it plainly appears from the motion, any attached exhibits, and the record of prior proceedings that the moving party is not entitled to relief, the judge must dismiss the motion and direct the clerk to notify the moving party. If the motion is not dismissed, the judge must order the United States attorney to file an answer, motion, or other response within a fixed time, or to take other action the judge may order.

On December 13, 2010, the Supreme Court denied certiorari in this case. (Filing No. 216.) Under 28 U.S.C. § 2255, a defendant has one year to file a § 2255 motion from "the date on which the judgment of conviction becomes final." Therefore, the one-year period in this case began to run on December 13, 2010, and ended on December 13, 2011. *Campbell-Fabela v. United States*, 339 F.3d 993, 993-94 (8th Cir. 2003). Because it appears that the Defendant's § 2255 motion was placed into the prison mailing system on December 14, 2011, the motion is untimely.

IT IS ORDERED:

1. The Court has completed the initial review of the Defendant's motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255 (Filing No. 217);
2. Upon initial review, the Court summarily denies the Defendant's § 2255 motion as untimely, and therefore the motion (Filing No. 217) is summarily denied;
3. A separate Judgment will be issued denying the § 2255 motion; and
4. The Clerk is directed to mail a copy of this Memorandum and Order to the Defendant at his last known address.

DATED this 3rd day of January, 2012.

BY THE COURT:

s/Laurie Smith Camp
Chief United States District Judge